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1951 **K** **File No.** Sales Tax II/51(R)

Legal Deptt.

B **BRANCH**

Subject:— Rules under the Sales Tax Acts Bombay 1946

File No. Sales Tax II/51 (R)

Gen. 194 e.

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Under section 8 of the Bombay Sales Tax Act read with rule 6 of the Bombay Sales Tax Rules, a company, firm or an individual has to make an application for registration in Form II. At the time of making an application a person may be either an individual or doing business in partnership. There cannot be any application by an individual intending to take partners. If he has no partners, the business is carried on by him individually. If he has partners he has to specify the names of the partners. If after registration he takes other partners or his partners retires and he carries on the business himself, this would be a change in the business under section 17 of the Bombay Sales Tax Act and the provisions of rule 11 will apply. In any case there cannot be a registration of a partnership or firm on the ground that a firm intends to take other partners. The view taken by the Collector of Sales Tax on this point does not appear to be correct.

Sd. J.R. Dhurandhar.
23/1

Additional Secretary to Government.

U.R. to F.D. No. 1530 dated the 28th January 1951.

VGP. 4-7-56.

Para 2 of F.D. note at page 85.- The view taken by F.D. is correct. The amendments of Form XIV have been shown at serial No. (11) at page 64 ante.

Para 3 of F.D.'s note at page 85.- The reasons given at page 30 for substituting Form XI are that a revised form in which entries can be made for each dealer for more than one year is considered desirable. The Form itself is intra vires the Act. But the scope of rule 23 is limited and will not cover the form. The revised form may be prescribed under revised rule 23, a draft of which is for, F.D.'s approval. The consequential renumbering of draft amendment is made at pages 64-67 ante.

Para 4 of F.D. note at page 86 ante.- The Indian Merchants' Chamber made the followin g two suggestions:-

(i) in the case of a private limited company the declaration in Form V.O. may be signed -
(a) by one of the Directors ~~by an authorised~~ and not by all,
(b) if there are no Directors, by an authorised representative;

(ii) different persons in charge of different branches shall be responsible for the affairs of respective branches.

As regards the suggestions (i) the F.D. has not accepted part (a) thereof. Part (b) has been accepted. Form V.O? has been accordingly amended.

As regards the suggestion (ii), it may be observed that the intention of F.D. in substituting Form V.O. as stated at 'A' on page 30 ante is to simplify it as dealers find it difficult to fill up the particulars. Rule 6 of the Bombay Sales Tax Rules provides for an application in Form II under section 8 of the Act. It is to be signed by the principal officer managing the business. One of the verifications to be made under the said Form II is to be made in the following terms :-

"My gross turnover of sales and supplies of goods

Office of the R.L.A.

A revised draft notification is sent herewith.

2. Since section 26 of the Bombay Sales Tax Act contemplates an order to be passed by the Collector for accepting a sum by way of composition the revised draft rule provides for the passing of an order in the prescribed form.

Sd/- J.R. Dhurendhar
12/7

Remembrancer of Legal Affairs.

U.R. to F.D. No.11005, dated the 12th July 1951.

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for all my places of business in the Province of Bombay etc. were as under."

Section 16A of the Act provides that every Hindu undivided family, association or a club, society, firm or company or very dealer who carries on business as the guardian or trustee or otherwise on behalf of another shall send a declaration stating the name of the person who shall be deemed to be the manager of such dealer for the purposes of this Act. For, V.O. prescribes the form of such declaration. The Indian Merchants' Chamber has not followed the implication of Form V.O. It is being simplified in order to enable a dealer to fill in particulars according to the class of dealers under which he falls. Whether a dealer of these classes has got one place of business or more than one, the manager who will be dealing with the Sales Tax Officer for the purposes of the Act and rules cannot be different for different places of business in the area within the jurisdiction of a Sales Tax Officer. Each local manager or agent will be responsible to the person who has been registered as a dealer under rule 7. That rule, therefore, provides for the issue of as many additional ~~places~~ copies of a registration certificate as there are additional places of business. Form V.O. does not interfere with the right of a dealer to decide by whom an additional place of business should be managed on his behalf. No amendments of Form V.O. on the lines suggested by F.D. in the linked file 6506/33 ST 45617 are necessary. Nor do the questions raised at 'B' in that file arise for consideration.

Sd. J.R.Dhurandhar.
12/3

Secretary to Government.

U.R. to F.D. No. 4112, dated the 13th March 1951.

The view taken by D.S.F.D. is correct.

2. The object of inserting section 8B in the Bombay Sales Tax Act was to provide for the grant of licences to registered dealers for purposes of tax free purchases only after the expiry of one year from the date of their certificates of registration. This amendment was necessitated on account of the fact that in a number of cases the dealers got themselves registered merely to get their goods tax free and evaded the payment of tax by changing their places of business. The licence to be issued under section 8-B is not periodical but is of a permanent nature as will be seen from the provisions of rule 7-C read with Form IIIB containing the form of licence. After having issued the licence under section 8-B, on application of a registered dealer, sub-section (2) of section 8-B provides that the Collector may suspend the licence granted under sub-section (1) for such period as may be necessary, or may cancel the same if the registered dealer to whom it has been granted fails to pay any tax, including penalty, payable by him under the Act, or contravenes any provisions of the Act. Since the penalty provided by section 8-B (2) of the Act for failure to pay any tax, including penalty payable by a dealer under the Act, is that the Collector may suspend his licence, a person cannot be penalised for his failure to pay any tax, including penalty, in any other manner, that is, by refusing to him the grant of licence which under section 8-B (1) of the Act he is entitled after the expiry of twelve calendar months from the date of his registration. The proposal made by the Collector of Sales Tax is inconsistent with the provisions of the Act.

Sd. J.R. Dhurandhar,
20/9

Remembrancer of Legal Affairs.

U.R. to F.D.No. 201-L dated the 20th September 1951.

A revised draft notification in place of the F.D. draft at pages 5 to 6 ante is sent herewith, subject to the following observations:-

No reasons are given either by the Collector of Sales Tax or by the F.D. as to why it is necessary to amend rule 5A(1)(vii) of the Bombay Sales Tax Rules by inserting the words "and specified in a licence issued under section 88 for such use", at the end of the said clause. Rule 5A is relatable to clause (iv) of rule I in sub-section (3) of section 6 of the Act. Where the sales are prescribed under rule 5A, such sales are to be deducted from the gross turn-over of a dealer during any period of his liability to pay the tax. The proviso to clause (ii) under rule I in sub-section (3) of section 6 of the Act would not apply to the kind of sales prescribed under clause (iv) of rule I. If the proposal of the Collector of Sales Tax is with reference to the said proviso, the amendment suggested by him to rule 5A is not in order.

The Collector of Sales Tax has also proposed to insert rule 38A for the reasons that it is considered necessary to prescribe some conditions for granting set off or a refund under section 13A of the Act. The proposal however, in so far as it authorises the Sales Tax Officer to pass an order specifying the goods required for use in the manufacture or processing of any goods or sale in respect of which the Tax paid on purchases of the same for the purpose of grant of set off or refund is not in order. The power under section 13A consists in prescribing the condition which a registered dealer has to satisfy before a set off or refund is granted This power does not include the power to pass an order specifying the goods required for use in the manufacture or processing of any goods for sale. Sub-rule (1) of rule 38A as proposed by the Collector of Sales Tax has therefore been omitted.

Sd. J.R.Dhurandhar.

U/L to F.D. No. 17736, dated the 8th 4/11 November 1951